

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of the
Redwood Falls Public Utilities
Commission to Extend its Assigned
Service Area into the Area Presently
Served by Northern States Power
Company

**RECOMMENDATION FOR
APPROVAL OF SETTLEMENT**

The above-entitled matter is before Administrative Law Judge Steve M. Mihalchick upon the joint petition of the parties that a stipulation and purchase agreement executed by the parties be approved.

The following appearances have been made in this matter:

Richard L. Evans, McGrann, Shea, Franzen, Carnival, Straughn & Lamb, Chartered, 220 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota 55402-2041, appeared on behalf of the City of Redwood Falls, Minnesota, by and through the Redwood Falls Public Utilities Commission (Redwood Falls).

Harold J. Bagley, Senior Attorney, Northern States Power Company, Law Department, 414 Nicollet Mall, Minneapolis, Minnesota 55401, appeared on behalf of Northern States Power Company (NSP).

Julia E. Anderson, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Public Service (DPS).

Harold LeVander, Jr., Maun & Simon, PLC, 2300 World Trade Center, 30 East 7th Street, St. Paul, Minnesota 55101-4904, appeared on behalf of the Redwood Electric Cooperative.

Based upon record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 26, 1996, Redwood Falls filed a petition with the Minnesota Public Utilities Commission (MPUC) stating that the City of Redwood Falls and the City of North Redwood had agreed to consolidate and would become one city under the name of Redwood Falls. (The consolidation became effective January 1, 1997). Redwood Falls stated in the petition that it desired to acquire, pursuant to Minn. Stat. § 216B.44, the service area of NSP which then served the residents of North Redwood. Since Redwood Falls and NSP were unable to agree on the amount of compensation to be

paid, Redwood Falls requested that the MPUC determine the compensation, also pursuant to Minn. Stat. § 216B.44.

2. On December 2, 1996, the MPUC issued its Notice and Order for Hearing, noting the possibility of settlement in the matter.

3. On December 24, 1996, Redwood Electric Cooperative filed a Petition to Intervene stating that it had a distribution agreement with NSP to provide electric power to the former North Redwood and that its rights to compensation under that agreement could be affected by the proceeding. On January 6, 1997, Redwood Falls objected to that Petition for Intervention. On January 24, 1997, DPS filed a Petition to Intervene.

4. A prehearing conference was held January 27, 1997. The parties reported making considerable progress towards settlement. It was agreed that that effort would continue and that a decision on Redwood Electric Cooperative's Petition to Intervene would be held in abeyance pending those discussions. DPS had been granted party status previously by the MPUC in the Notice and Order for Hearing.

5. On February 14, 1997, the parties reported that they had reached agreement in principle to resolve the matter, that NSP and Redwood Falls had agreed upon the consideration to be paid, and that Redwood Electric Cooperative had agreed to accept an amendment of the distribution agreement under which Redwood Falls would assume the obligations of NSP relating to the former North Redwood. Negotiations to finalize the agreement proceeded over the next several months.

6. On November 26, 1997, Redwood Falls and NSP filed a Stipulation of Settlement and Joint Petition, a copy of the executed Purchase Agreement Between Northern States Power Company and the City of Redwood Falls dated as of December 1, 1997 (Purchase Agreement), and a proposed Order Accepting Settlement. Exhibit E to the Purchase Agreement, which had been mistakenly omitted, was filed on December 3, 1997.

7. The Stipulation of Settlement and Joint Petition states, among other things, that the terms of the settlement between Redwood Falls and NSP are incorporated in the Purchase Agreement; are fair and reasonable based upon the book value of the property being conveyed by NSP, the estimated loss of revenue to NSP, the expenses resulting from the integration of facilities, and other appropriate factors contemplated in Minn. Stat. § 216B.45; and "that such a purchase under § 216B.45 must be deemed to be consistent with the public interest for the purpose of Minn. Stat. § 216B.50."

8. The Purchase Agreement sets forth the terms of the agreement between NSP and Redwood Falls and states that it is subject to approval by the MPUC. It provides for the sale by NSP and the purchase by Redwood Falls of NSP's interest in the electric distribution lines and related facilities used for serving retail customers located in the area of the former City of North Redwood. The consideration is:

- a. Redwood Falls will maintain the facilities from the date of the Purchase Agreement (December 1, 1997) through the closing date.
- b. Redwood Falls will pay NSP \$340,104, plus reimbursements for additions made after the date of the Purchase Agreement.

- c. Redwood Falls will enter into an agreement with Redwood Electric Cooperative in the form attached as Exhibit E to the Purchase Agreement.

The Purchase Agreement contains many other terms necessary to a complete purchase agreement.

9. Exhibit E to the Purchase Agreement is an executed document entitled Distribution Agreement Between City of Redwood Falls, Minnesota, and Redwood Electric Cooperative. The effect of this Distribution Agreement is that Redwood Falls assumes the obligations of NSP with regard to the delivery of electricity to the former City of North Redwood under the Restated Distribution Agreement dated March 24, 1993, between NSP and Redwood Electric Cooperative. Exhibit F to the Purchase Agreement is a document entitled Restated Distribution Agreement between Northern States Power Company (Minnesota) and Redwood Electric Cooperative. This document is an amendment to the former Restated Distribution Agreement deleting the service area of the former City of North Redwood, which is necessary to coordinate it with the assumption of that obligation under Exhibit E.

10. On December 4, 1997, DPS filed a letter with the Administrative Law Judge stating it did not oppose the settlement set forth in the Stipulation of Settlement and Joint Petition and the Purchase Agreement. No objection has been filed by Redwood Electric Cooperative.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Public Utilities Commission and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 216B.44.

2. Redwood Falls is a municipality which owns and operates an electric utility and which has extended its corporate boundaries through consolidation to include the area of the former City of North Redwood, which area is presently receiving electric service from NSP. Therefore, under the provisions of Minn. Stat. § 216B.44, Redwood Falls may purchase the facilities of NSP serving the area.

3. Under additional provisions of Minn. Stat. § 216B.44, when the municipality and public utility are unable to agree to the amount to be paid for the property, either party may notify the MPUC and the MPUC shall, after public hearing, determine the matter of just compensation, considering factors set forth in the statute. Because the parties have now agreed to the matter of compensation, there is no longer any necessity under the statute for the MPUC to make that determination. Thus, there is no longer any requirement under Minn. Stat. § 216B.44 for MPUC approval.

4. In the alternative, to the extent approval by the MPUC is necessary, the fact that the parties, both being experienced electric utility providers advised by knowledgeable and experienced counsel have agreed to the terms set forth in the Purchase Agreement, requires a conclusion that the agreed upon terms constitute just compensation.

5. Minn. Stat. § 216B.45 allows a municipality to purchase the property of a public utility operating in the municipality under a franchise upon notice to the public utility. Again, this statute provides that if the parties are unable to agree on the amount to be paid for the property, the MPUC shall make that determination after hearing. Arguably, this statute also applies in this situation, at least since January 1, 1997, since the City of Redwood Falls has included the area of the former City of North Redwood. However, Minn. Stat. § 216B.44 more clearly applies to the facts of the situation here. To the extent it is required, approval under Minn. Stat. § 216B.45 of the agreed upon compensation under the terms of the Purchase Agreement should be granted for the reasons stated above.

6. Minn. Stat. § 216B.50 provides that no public utility may sell or acquire any plant as an operating unit or system for a total consideration in excess of \$100,000 unless first being authorized to do so by the MPUC. The MPUC is required to determine whether the proposed action is consistent with the public interest, taking into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of. A municipality is excluded from the definition of "public utility" by Minn. Stat. § 216B.02. Thus, Minn. Stat. § 216B.50 does not apply to the acquisition here. This is consistent with the scheme of the Public Utilities Act, which excepts municipal and cooperative utilities from general regulation. ***City of Rochester v. Peoples Cooperative Power Association, Inc.***, 483 N.W.2d 477 (Minn. 1992); ***In Re City of White Bear Lake's Request for an Electric Utilities Service Area Change within its City Limits***, (Minn. App. 1989).

7. If Minn. Stat. § 216B.50 does apply to this case, it would be concluded that the proposed acquisition by Redwood Falls is consistent with the public interest given the statutory preference for a municipal utilities and the fact that knowledgeable and informed parties have agreed to the reasonable value of the property.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE PUBLIC UTILITIES COMMISSION WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that The Minnesota Public Utilities Commission:

1. Accept and approve the Stipulation of Settlement and Purchase Agreement.
2. Direct that NSP may proceed to transfer to Redwood Falls the electric service area and electric operating properties identified in the Purchase Agreement on the date of closing under the Purchase Agreement and without further proceedings before or approval from the Commission.

Dated this 8th day of December 1997.

STEVE M. MIHALCHICK
Administrative Law Judge